

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN MILLINER,

Plaintiff,

v.

DAVID DIGUGLIELMO, et al.,

Defendants.

CIVIL ACTION

No. 08-4905

ORDER

AND NOW, this 7 day of June, 2011, for the reasons discussed in the accompanying memorandum, it is hereby **ORDERED** as follows:

(1) The Motion of David DiGuglielmo, Julie Knauer, and Myron Stanishefski to Dismiss the Third Amended Complaint of John Milliner, dkt. 64., is hereby **GRANTED** and the complaint against those defendants is **DISMISSED** without prejudice as to all counts.¹

(2) The Motion of Raymond Machak, P.A., John Zaro, M.D., Richard Stefanic, M.D., Caleb Nwosu, D.O. and Prison Health Services, Inc. to Dismiss the Third Amended Complaint of John Milliner, dkt. 66, is hereby **GRANTED** in part. Count II (as to

¹ Milliner's complaint includes the following ten counts: I – deliberate indifference as against David DiGuglielmo, Julie Knauer, and Myron Stanishefski; II – deliberate indifference as against Raymond Machak, P.A., John Zaro, M.D., Richard Stefanic, M.D., Caleb Nwosu, D.O.; III – deliberate indifference as against PHS; IV – medical malpractice as against the Raymond Machak, P.A., John Zaro, M.D., Richard Stefanic, M.D., Caleb Nwosu, D.O.; V – corporate liability for medical malpractice as against PHS; VI – vicarious liability for medical malpractice as against PHS; VII – medical malpractice as against Carroll Osgood; VIII – corporate liability for medical malpractice as against Altoona Hospital; IX – vicarious liability for medical malpractice as against Altoona Hospital; X – negligence as against all defendants.

Machak, Stefanic, and Nwosu), and Count X (as to PHS) are **DISMISSED** without prejudice. The motion to dismiss is **DENIED** as to all other counts, such that Counts II (as to Zaro), III, IV, V, VI and X (as to Machak, Zaro, Stefanic, Nwosu) will remain.

(3) The Motion of Carroll P. Osgood, M.D. and Altoona Hospital to Dismiss the Third Amended Complaint of John Milliner, dkt. 76, is hereby **GRANTED** in part. Count X (as to Dr. Osgood and Altoona Hospital) and Count VIII are **DISMISSED** without prejudice. The motion to dismiss is **DENIED** as to all other counts such that Count VII and Count IX will remain.

(4) Milliner may amend his complaint no later than 30 days from the date of this order, after which time the dismissals ordered herein will, absent a responsive amendment, be with prejudice.

(5) Plaintiff's Motion to Strike Reply Brief of Defendants Machak, Zaro, Stefanic, Nwosu and Prison Health Services, dkt. 80, is **DENIED**. *See* Local R. Civ. P. 7.1(c) ("[C]ourt may require or permit further briefs or submissions if the Court deems it appropriate.").

BY THE COURT:

/s/ Louis H. Pollak

Pollak, J.